

## Role of Bilateral Defense Agreements in Maintaining the European Security Equilibrium, The

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## The Role of Bilateral Defense Agreements in Maintaining the European Security Equilibrium

The United States has entered a period of uncertainty in its defense security relationship with Europe. The vast changes that swept through Eastern Europe with the democratic revolts of the past two years have raised difficult questions about how to maintain the pre-existing European security equilibrium and the United States' role in the future of European security.

In assessing the future of European and U.S. defense relations, it is customary to address the United States multilateral relations with its European allies, as seen either in the North Atlantic Treaty Organization ("NATO") or in the Conference on Security and Cooperation in Europe ("CSCE"). The thesis of this Article, however, is that there is another highly important aspect to the United States' role in the European security equilibrium: the bilateral defense agreements that the United States has with each of its European defense partners.

These bilateral defense agreements provide for the presence of U.S. forces in Europe and the right to use certain installations for defense activities. Each bilateral defense agreement represents the practical, highly visible foundation for defense cooperation between the United States and the European ally involved. Such agreements contain the basic rules for thousands of U.S. troops in European countries, rules for overflights and transits, rules for exercises, and rules for construction, improvement and withdrawal from facilities. In some cases, they provide for bilateral consultative groups to discuss bilateral defense issues. These defense agreements are expressed in legally binding terms and therefore present an important opportunity for international law to help fashion the security relationship with each European ally. Because these agreements are bilateral, they can be more easily negotiated and

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amended than multilateral defense agreements and can be structured to suit the special needs of the defense relationship between two Parties.

Part I of this Article discusses briefly the changes in Europe that suggest a need to rethink in the 1990s the international agreements that govern our defense relations, both multilateral and bilateral. Part II assesses the nature of U.S. bilateral defense agreements since the Second World War. Part III reviews the bilateral defense agreements recently concluded by the United States with Turkey (1980), Spain (1989), and Greece (1990). Part IV considers the future of such agreements in a changing Europe.

## **I. Defense Agreements in a Changing Europe**

For forty years, Europe was a divided continent. From the Berlin Wall, representing the physical partition of Germany, Europe's central power, to the emergence of two superpower-dominated alliances, NATO and the Warsaw Pact, the Europe of the Cold War had become accepted by most of the world as a permanent and inescapable feature of the post-World War II era.

Whatever its faults, the post-World War II condition of Europe settled into an era of stability last seen on the continent only with the Congress of Vienna. In the forty years prior to the establishment of the North Atlantic Treaty Organization, two devastating military conflicts wrecked Europe's political and economic stability. In the forty years after the establishment of NATO, peaceful, albeit tense, relations reigned in Europe. The swift but localized Soviet interventions in Hungary and Czechoslovakia were the exception and not the rule.

Suddenly, in 1989, the countries of Eastern Europe began to erupt with political change: Communist governments placed in power and held in place by force were overthrown by popular revolt. Borders once guarded and strewn with barbed wire were thrown open between Hungary and Austria, Czechoslovakia and Austria, and ultimately East and West Germany. The Berlin Wall came tumbling down. By the end of 1990, East and West Germany were united in the Federal Republic of Germany, and while Soviet troops remained stationed in Eastern Europe, Soviet internal economic turmoil and the fragmentation of its republics clearly revealed Soviet power in Europe to be on the decline.

With Soviet power and influence on the wane and the emergence of a united Germany, Europe once again faces the problem of how to maintain the security equilibrium. Troubling questions arise: Do the existing security structures need to be discarded? What countries or power groups pose a threat to that security? Is the Soviet Union truly transformed? What is its future? Will ethnic or nationalist sentiments threaten regional stability? Are other threats to security emerging in the form of environmental degradation, terrorism, or narcotics?

As Robert Tucker points out, the unprecedented aspect of this situation is that the hegemonic conflict that previously characterized Euro-

pean equilibrium has been settled peacefully.<sup>1</sup> Unlike the aftermath of the First and Second World Wars, there is no vanquished foe, no armistice or peace treaty to be negotiated, and no clearly defined, competing ideologies. Into this situation must step the two key instruments of foreign policy: diplomacy and law. Through diplomacy the United States and Europe can seek to identify the critical security interests common to our nations. Through international law and institutions these mutual interests can be set forth in binding agreements and processes that will foster Europe's security equilibrium. In addressing these interests, two multi-national institutions that immediately come to mind are the CSCE and NATO.

The thirty-four nation Conference on Security and Cooperation in Europe, initially launched in 1972,<sup>2</sup> will almost certainly play an important role in Europe's future, most notably through its continuous process of consultations among all of the European nations, as well as the United States and Canada. The Helsinki Final Act of 1975, the first major instrument of the CSCE, encompassed a wide range of agreements on principles governing relations among states; measures designed to build confidence between them; principles concerning the free movement of people, ideas, and information; and cooperation in cultural, economic, technical and scientific fields.<sup>3</sup> Although the Helsinki Final Act did not create legally binding obligations, it enjoys widespread recognition as a politically binding document; some of its principles are evolving into customary international law. As President Bush stated in his address to the CSCE ministerial meeting in New York City in October 1990, it is "in the human rights and fundamental freedoms set down in Helsinki 15 years ago [that] we find the cause and

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1. Tucker, *1989 and All That*, 69 FOREIGN AFF. 93, 95 (1990).

2. Multilateral preparatory talks for the Conference began in November 1972, but the Conference formally opened in July 1973.

3. Conference on Security and Cooperation in Europe, Final Act, August 1, 1975, 14 I.L.M. 1292 (1975). The Final Act is divided into three sections or "baskets" relating to (1) general principles and security issues; (2) economics, science and technology, and the environment; and (3) humanitarian issues, dissemination of information, and cultural cooperation. Basket I endorses a program of confidence and security-building measures ("CSBMs") to remove some of the secrecy surrounding military activities. For instance, Basket I calls for prior notification of certain military maneuvers and movements and for the exchange of observers of those maneuvers and movements. *Id.* at 1298-99.

The Helsinki process has been the subject of periodic reviews or follow-up meetings. A follow-up Conference on Confidence-and-Security-Building Measures and Disarmament in Europe, held from Jan. 17, 1984, to Sept. 19, 1986, produced the Stockholm Document of Sept. 19, 1986. It, too, contains provisions on the use of force and on notification and observation of certain military activities. 26 I.L.M. 190, 191-92 (1987). The recent Treaty on Conventional Forces in Europe, signed Nov. 19, 1990, 30 I.L.M. 1 (1991), at the beginning of the CSCE summit meeting in Paris, was negotiated among the 23 members of NATO and the Warsaw Pact within the framework of the CSCE process. The CSCE meetings will continue to have an important role in an evolving Europe.

catalyst of . . . 'the Revolution of 1989.'"<sup>4</sup> Before adjourning on November 21, 1990, the CSCE members signed the Charter of Paris for a New Europe, a document proclaiming a new order of peaceful relations among multiparty democracies with market economies. The Charter established a permanent CSCE secretariat in Prague, a center for conflict prevention in Vienna, and an office for free elections in Warsaw. It also called for the creation of a CSCE parliamentary assembly.<sup>5</sup>

The North Atlantic Treaty Organization<sup>6</sup> was founded, in the first instance, as a response to the Soviet military threat. The core of the North Atlantic Treaty is Article 5, in which the members agree that an attack on any one of them in Europe or North America is an attack against them all.<sup>7</sup> Today, because of the perceived diminution of that threat, NATO's role is being questioned. Nevertheless, NATO remains the primary multilateral security arrangement for the Western alliance, designed as a defensive arrangement to prevent and repel aggression against its members.

Many of the norms expressed in the NATO Treaty clearly have a place in the evolving European security equilibrium. For instance, under Article 1 of the Treaty, the parties undertake to settle international disputes peacefully, so that security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.<sup>8</sup> Regional collective security arrangements such as the NATO Treaty are recognized in Chapter VIII of the Charter of the United Nations<sup>9</sup> and will continue to play an important part in Europe's future.

In considering multilateral security arrangements for a Europe of the future, it is instructive to recall that during the period that the NATO Treaty was concluded, several European countries undertook other multilateral security arrangements as well. The Baghdad Pact of February 24, 1955, brought together in a mutual cooperation agreement

4. President George Bush, Remarks at the CSCE Ministerial Meeting (Oct. 1, 1990), *reprinted in* 1 U.S. Department of State Dispatch 154 (1990).

5. Charter of Paris for a New Europe, 30 I.L.M. 190 (1991).

6. The North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

7. Article 5 states:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security. *Id.* at art. 5.

8. 63 Stat. 2241, 2242, T.I.A.S. No. 1964, at 2, 34 U.N.T.S. 243, 244.

9. U.N. CHARTER art. 52, ¶ 1.

such disparate nations as the United Kingdom, Pakistan, Iran, and Iraq. The United States became an associate member in 1958, and in 1959 the group became the Central Treaty Organization ("CENTO").<sup>10</sup> The Balkan Pact of August 9, 1954, brought Greece, Turkey, and Yugoslavia into an alliance of political cooperation.<sup>11</sup> Just prior to the NATO Treaty, the Brussels Treaty of 1948 established the Western European Union ("WEU").<sup>12</sup> Although many of its defense functions were transferred to NATO and its economic, cultural, and social responsibilities were passed to the Organization for European Economic Cooperation, the Council of Europe, and the European Community, the WEU has retained certain functions right up to today. The tendency to group together European nations with particular historical, economic, or political affiliations may emerge again in a new Europe.

This Article focuses, however, not on the role of these multilateral agreements and institutions in the future of European security, but rather on the bilateral defense agreements, between the United States and its European partners, which authorize the deployment of U.S. forces and the conduct of defense activities in the agreeing country. In order to support fundamental security objectives in Europe since the Second World War, the United States has entered into several bilateral agreements relating to the presence of U.S. forces and the use of defense facilities in the territory of U.S. defense allies. Contrary to what might be expected, neither the NATO Treaty nor the NATO Status of Forces Agreement<sup>13</sup> grants the United States a right to station or send its military forces to the territory of other NATO countries. Rather, Article 3 of the NATO Treaty simply provides that the Parties separately "will maintain and develop their individual and collective capacity to resist armed attack."<sup>14</sup> The NATO Status of Forces Agreement (commonly referred to as the "NATO SOFA") governs how NATO forces are to be treated once they are in a NATO country, but it too does not grant any stationing rights in Europe. Instead, the NATO SOFA provides that the decision to send military forces into another NATO country and the condition under which they will be sent will "continue to be the subject

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10. Declaration Relating to the Baghdad Pact, July 28, 1958, 9 U.S.T. 1077, T.I.A.S. No. 4084, 335 U.N.T.S. 205.

11. Three-Power Defense Treaty, Aug. 9, 1954, Yugoslavia-Greece-Turkey, 211 U.N.T.S. 237.

12. Brussels Treaty, Mar. 17, 1948, 19 U.N.T.S. 51.

13. Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. No. 2846, 199 U.N.T.S. 67 [hereinafter NATO SOFA].

14. Article 3 states in full:

In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

63 Stat. 2241, 2242, T.I.A.S. No. 1964, at 4, 34 U.N.T.S. 243, 246.

of separate arrangements between the Parties concerned.”<sup>15</sup>

Deployment of U.S. forces to European countries, from the beginning, has been based on the consent of the host country through bilateral agreements. Within a few years after the signing of the NATO Treaty, the United States had entered into such agreements with most of its European allies. For example, two years after NATO was founded, the United States and Portugal concluded a bilateral executive agreement on the use of military facilities in the Portuguese Azores, an archipelago of islands located approximately 850 nautical miles west of Lisbon. The United States-Portugal Defense Agreement of September 6, 1951,<sup>16</sup> along with certain amendments and implementing agreements, has served as the basic accord governing U.S. military activities in the Azores for the past forty years: activities which primarily involve antisubmarine warfare operations and staging and logistic support. In the same year, defense agreements were concluded allowing U.S. forces to use facilities in Iceland and Greenland.<sup>17</sup> By the Exchange of Diplomatic Notes of January 7, 1952, between the United States and Italy, Italy agreed to contribute resources and facilities to fulfill its obligation to develop and maintain “the defensive strength of the free world.”<sup>18</sup> Implementing agreements concluded pursuant to this Exchange of Diplomatic Notes form the bilateral basis for U.S. defense activities in Italy.

Thus, from the beginning of NATO, bilateral defense agreements have served as critical elements in the United States’ participation in the European security scheme. While there is little question that multilateral institutions and agreements will serve a critical role in an evolving Europe, the United States’ role in this evolution could in large part depend on the special relationships that it establishes with its European partners through the vehicle of bilateral defense agreements.

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15. NATO SOFA, *supra* note 13, 4 U.S.T. at 1794, T.I.A.S. No. 2846, at 2, 199 U.N.T.S. at 70. The language quoted appears in the Preamble.

16. Defense Agreement, Sept. 6, 1951, United States-Portugal, 5 U.S.T. 2263, T.I.A.S. No. 3087, 237 U.N.T.S. 217. This agreement has been extended several times: Nov. 15, 1957, 8 U.S.T. 2353, T.I.A.S. No. 3950, 303 U.N.T.S. 354; Dec. 9, 1971, 22 U.S.T. 2106, T.I.A.S. No. 7254, 851 U.N.T.S. 274; June 18, 1979, T.I.A.S. No. 10050; and Dec. 13, 1983, T.I.A.S. No. 10838. On May 18, 1984, the Parties signed an extensive Technical Agreement in Implementation of the Defense Agreement of September 6, 1951, *reprinted in* STAFF OF THE FOREIGN AFFAIRS AND DEFENSE DIVISION OF THE CONGRESSIONAL RESEARCH SERVICE, 99th Cong., 2d Sess., REPORT ON U.S. MILITARY INSTALLATIONS IN NATO’S SOUTHERN REGION FOR THE SUBCOMM. ON EUROPE AND THE MIDDLE EAST OF THE HOUSE COMM. ON FOREIGN AFFAIRS 77 (Comm. Print 1986) [hereinafter REPORT].

17. Defense Agreement, May 5, 1951, United States-Iceland, 2 U.S.T. 1195, T.I.A.S. No. 2295, 205 U.N.T.S. 180; Agreement Concerning Defense of Greenland, April 27, 1951, United States-Denmark, 2 U.S.T. 1485, T.I.A.S. No. 2292, 94 U.N.T.S. 35.

18. Agreement on Mutual Security, Exchange of Diplomatic Notes, United States-Italy, Jan. 7, 1952, 3 U.S.T. 4613, T.I.A.S. No. 2611.

## II. The Nature of Bilateral Defense Agreements

The term "bilateral defense agreement," on its face, is quite broad. Countries can and do enter into bilateral agreements that govern military training, arms production, arms sales, arms reduction, and other defense-related matters, all of which could be considered "bilateral defense agreements." Military training, arms production, and arms sales agreements, however, are typically executed at a fairly low level and rarely have a strong impact on the overall defense relationship between two countries.<sup>19</sup> Arms control agreements are in a class by themselves, and while they can have a profound effect on bilateral relations, they typically are between adversaries rather than allies. The most significant "bilateral defense agreements" with respect to the United States and its European allies are those involving overall defense cooperation between the two governments, including the presence of U.S. forces and the use of defense facilities in the host country. They are known by a variety of names, ranging from "base agreement" to "mutual defense cooperation agreement" to "mutual security agreement."

What then is the content of these bilateral defense agreements? A full-scale "base agreement" typically permits the United States to erect, maintain, improve, and use permanent structures; to station forces on a permanent basis; and to conduct certain military activities, such as training exercises, within the host country. More limited "access agreements" authorize the use of certain host country installations for transit, staging of forces, or prepositioning of equipment, but they do not permit a permanent U.S. presence other than small, caretaker units for the maintenance and protection of U.S. equipment and property. In even more limited situations, where the United States is simply using a particular administrative or technical facility, for example an office building for the forces, a standard lease may serve as the bilateral agreement. Such an agreement is actually a contract subject to host country law rather than to an executive agreement governed by international law.

Typically, a host country does not waive its sovereignty over the U.S. installations and facilities on its territory. Such installations are often referred to as "U.S. bases," but in fact, the United States has only

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19. Nevertheless, these other defense agreements are important to the bilateral defense relationship. For instance, the mutual security assistance legislation passed by the Congress in the post-World War II era contained prohibitions on U.S. sales or grants of defense articles to a foreign country unless that country agreed not to transfer such articles to a third country without the consent of the United States. Therefore, to allow the United States to help improve the defense of Western Europe in the immediate post-War era, the Executive Branch entered into a series of mutual defense assistance agreements with its European allies. *See, e.g.,* Mutual Defense Assistance Agreement (exchange of notes), Jan. 17, 1950, United States-Italy, 1 U.S.T. 50, T.I.A.S. No. 2013, 80 U.N.T.S. 145; Agreement Relating to the Assurances Required under the Mutual Security Act of 1951 (exchange of notes), Dec. 21, 1951 & Jan. 7, 1952, United States-Greece, 3 U.S.T. 4569, T.I.A.S. No. 2608, 180 U.N.T.S. 171; Mutual Defense Assistance Agreement, June 30, 1955, United States-Germany, 6 U.S.T. 6005, T.I.A.S. No. 3444, 240 U.N.T.S. 69.



operating rights set out in the base agreement, which can be subject to various conditions imposed by the host country. Restrictions on the use of military installations include limits on the purposes for which U.S. forces may be employed, the presence or use of particular types of weapons, and the level of forces.

Moreover, when the United States builds new facilities or buildings on a base, the host nation normally obtains title to the structures as soon as they are built. For this reason, U.S. funds are expended to build or to improve such structures only if they serve a military purpose that benefits the United States forces rather than the host country alone. The U.S. Congress has established strict control over the expenditure of funds for such projects, requiring notification to the Congress within sixty days in most cases and, in some cases, specific Congressional approval.<sup>20</sup> Congressional oversight has prompted the negotiation of written agreements with the host country to ensure that the U.S. presence will be permitted for long enough to provide a reasonable rate of return on the investment and to ensure the recovery of the residual value, if any, of facilities constructed and then abandoned by U.S. forces.

In the immediate post-World War II era, these agreements served to normalize our relations in Europe by providing for the presence of extensive U.S. forces in each Western European country. Most of the early agreements were short and simple. Over time, however, the practical difficulties and political sensitivities of extensive deployments resulted in the renegotiation, amendment, or supplementation of the earlier agreements. As these nations sought increased military assistance from the United States, they began to view the security agreements as integral to defense procurement and modernization programs. At times, U.S. government pledges of military or economic assistance accompanied the facilities agreements, usually in the form of a diplomatic note or *aide memoire* from the United States to the host government. When made, these undertakings were "best efforts" pledges, conditioned on and subject to U.S. "constitutional procedures," *i.e.*, the annual authorization and appropriations process of the U.S. Congress. The negotiation of these amendments and supplements constituted a dynamic process in which the security relationship between the United States and its European allies evolved and matured.

A separate element of U.S. bilateral defense agreements with European allies consists of those agreements, or parts of agreements, relating to the status of forces at U.S. bases and facilities. These agreements, commonly referred to as "SOFAs," accord certain privileges and immunities to U.S. forces, their civilian component, and their dependents. The most important provisions of these agreements typically provide protection from local criminal and civil jurisdiction, exemptions from taxes and customs duties, and provisions for expedited entry and exit. Because many U.S. force members are sent overseas without their spe-

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20. See 10 U.S.C. §§ 2801-2808 (1988).

cific consent, the U.S. government must ensure that they are protected, to the maximum extent possible, from the perils of foreign courts and prisons. These special protections may also apply to persons and entities providing contractual services to the U.S. forces.

For Europe, generally, a multilateral, NATO-wide SOFA governs the legal status of military personnel from one member country called upon to serve under NATO command in another member country.<sup>21</sup> It is the only SOFA to which the United States is a party that was concluded in the form of a treaty and submitted to the U.S. Senate for advice and consent.

The United States, however, has supplemented its rights and obligations under the NATO SOFA through bilateral SOFAs with several of its European allies, such as Denmark, Germany, Greece, Iceland, the Netherlands, Norway, and Turkey.<sup>22</sup>

These bilateral facilities agreements and SOFAs with European allies are usually negotiated and concluded by the U.S. as executive agreements and not as treaties subject to the advice and consent of the Senate. Negotiation of such agreements without Congressional approval has been an occasional source of friction between the executive and legislative branches.<sup>23</sup> Controversy over executive agreements governing military bases with Portugal and Bahrain helped prompt passage of the Case-Zablocki Act,<sup>24</sup> which requires the State Department to transmit all international agreements to the Congress within sixty days after their entry into force.<sup>25</sup> Because these agreements neither contain a commitment by the United States to deploy forces on behalf of another nation, nor create new rights for those nations in the United States, the executive branch has considered it acceptable to conclude

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21. NATO SOFA, *supra* note 13. An agreement to cover the civilian side of NATO was signed soon after the NATO SOFA. Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, Sept. 20, 1951, 5 U.S.T. 1087, T.I.A.S. No. 2992, 200 U.N.T.S. 3. A subsequent protocol to the NATO SOFA defined the status of the NATO military headquarters. Proposal on the Status of International Military Headquarters, Aug. 28, 1952, 5 U.S.T. 870, T.I.A.S. No. 2978, 200 U.N.T.S. 340.

22. Exchange of Notes on Status of Personnel of Military Assistance Advisory Group and Offshore Procurement Program, Dec. 12, 1956, United States-Denmark, 9 U.S.T. 271, T.I.A.S. No. 4002; Agreement on Status of U.S. Forces, Aug. 3, 1959, United States-Federal Republic of Germany, 14 U.S.T. 689, T.I.A.S. No. 5352; Agreement Concerning the Status of U.S. Forces, Sept. 7, 1956, United States-Greece, 7 U.S.T. 2555, T.I.A.S. No. 3649; Annex to Agreement on Status of U.S. Personnel and Property, May 8, 1951, United States-Iceland, 2 U.S.T. 1533, T.I.A.S. No. 2295; Exchange of Notes on Stationing of U.S. Armed Forces, Apr. 13, 1954, United States-Netherlands, 6 U.S.T. 103, T.I.A.S. No. 2950; Exchange of Notes on Status of Military Assistance Group, Apr. 13, 1954, United States-Norway, 5 U.S.T. 619, T.I.A.S. No. 2950; Agreement on Status of U.S. Forces, June 23, 1954, United States-Turkey, 5 U.S.T. 1465, T.I.A.S. No. 3020.

23. L. JOHNSON, *THE MAKING OF INTERNATIONAL AGREEMENTS* 57-70 (1984).

24. 1 U.S.C. § 112b (1988).

25. *Id.* See also L. MARGOLIS, *EXECUTIVE AGREEMENTS AND PRESIDENTIAL POWER IN FOREIGN POLICY* 86-88 (1986); *Executive Agreements with Portugal and Spain: Hearings Before the Senate Comm. on Foreign Relations*, 92d Cong., 2d Sess. (1972).

them as executive agreements. Nonetheless, in some cases, there may be non-legal reasons for heightening the political significance of the defense relationship by establishing a treaty.<sup>26</sup> In international law, of course, a treaty is no more or less legally binding than an executive agreement.

These agreements are a key component of the United States' bilateral security relationship with each of its European allies. By observing some of the characteristics of the most recent and significant bilateral defense agreements, one can glean a few lessons about how these accords may develop in the future.

### III. Recent Bilateral Defense Agreements with Europe

There are too many U.S.-European defense agreements to discuss them all in detail, but some of the recent ones concluded with key European allies are illustrative of the issues that typically arise. They also provide a sense of how these agreements can or should change in the future, whenever they are renewed or renegotiated. Therefore, this section provides a brief review of three agreements recently concluded with Turkey (1980), Spain (1989), and Greece (1990).

#### A. Turkey

Turkey has been a key participant in the NATO alliance since it became a member in 1952.<sup>27</sup> Turkey maintains the second largest military force of any NATO country and hosts various military installations used by the United States and other NATO forces. There can be little question that Turkey's geographic location gives it great strategic importance. It borders Syria, Iraq, Iran, the Soviet Union, and Bulgaria, and highly significant air routes and waterways lie within its control, including the Bosphorus and the Dardanelles, the gateways to the Black Sea.

Beginning in the 1950s, the United States and Turkey entered into a number of agreements regarding mutual security and defense assistance. On July 3, 1969, a Defense Cooperation Agreement<sup>28</sup> was signed by the two governments to consolidate the various bilateral accords. This Agreement governed operations at each facility in Turkey used by the United States throughout the 1960s and early 1970s.<sup>29</sup>

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26. A good example of this is the 1976 Treaty of Friendship and Cooperation between the United States and Spain, which could just as easily have been negotiated and concluded as an executive agreement. Treaty of Friendship and Cooperation, Jan. 24, 1976, United States-Spain, 27 U.S.T. 3005, T.I.A.S. No. 8360.

27. Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, Oct. 17, 1951, 3 U.S.T. 43, T.I.A.S. No. 2390, 126 U.N.T.S. 350 [hereinafter Protocol].

28. Defense Cooperation Agreement, July 3, 1969, United States-Turkey (unpublished), noted in REPORT, *supra* note 16, at 50.

29. When the U.S. Congress imposed an embargo on arms transfers to Turkey in the mid-1970s in response to the conflict in Cyprus, Turkey announced that the Defense Cooperation Agreement was no longer valid, leading to the suspension of U.S. defense operations at Sinop, Pirinlik, Belbasi, and Karamursel for more than

Negotiations between the United States and Turkey in 1979 culminated in the conclusion of a new agreement, the Defense and Economic Cooperation Agreement ("DECA"), which was signed on March 29, 1980.<sup>30</sup> This bilateral defense agreement now governs the use of military installations in Turkey by U.S. personnel and explicitly recognizes the principle that "the maintenance of an adequate defense posture is an important element for the preservation of world peace and stability."<sup>31</sup>

The major military facilities used by the United States in Turkey include bases at Sinop on the Black Sea coast and Pirinlik in southeastern Turkey, as well as a seismographic detection facility at Belbasi in central Turkey. Other major facilities are located on the south-central coast, including supply and storage depots at Yumurtalik and Incirlik Air Base. Incirlik is the major tactical fighter base in Turkey and serves as a key deployment platform for U.S. Air Force aircraft participating in NATO-related missions. These aircraft are "the most forward deployed, land-based U.S. tactical combat aircraft in the eastern Mediterranean."<sup>32</sup>

In addition to defense cooperation, the 1980 DECA expressly recognizes the need for cooperation between the U.S. and Turkey in the economic sector. The preamble states that the two nations "desire to maintain the security and independence of their respective countries and to increase the standard of living of their peoples."<sup>33</sup> In Article I, the parties agree to "maintain cooperation so as to foster their economic and social development."<sup>34</sup> In Article II, the reason for combining defense and economic relations is made clear: the parties recognize that "a sound defense rests on a sound economy."<sup>35</sup>

In Article V, Turkey authorizes the United States "to participate in joint defense measures at specified Turkish Armed Forces installations,"<sup>36</sup> and further states that defense cooperation "shall be limited to obligations arising out of the North Atlantic Treaty."<sup>37</sup> Thus, unless characterized as operations in defense of NATO, the DECA does not envision the use of Turkish bases for U.S. military operations in areas such as the Middle East or the Persian Gulf. On the other hand, nothing

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three years. STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 94th Cong., 2d Sess., CONGRESSIONAL-EXECUTIVE RELATIONS AND THE TURKISH ARMS EMBARGO 25 (Comm. Print 1981); Statement by Undersecretary of State for Political Affairs Philip C. Habib before the Senate Comm. on Foreign Relations (Sept. 15, 1976), *reprinted in* DEP'T ST. BULL., Oct. 4, 1976, at 424-26.

30. Defense and Economic Cooperation Agreement, Mar. 29, 1980, United States-Turkey, 32 U.S.T. 3323, T.I.A.S. No. 9901 [hereinafter U.S.-Turkey Agreement].

31. *Id.*

32. REPORT, *supra* note 16, at 48-50.

33. *Id.*

34. *Id.* at 3.

35. *Id.* at 4.

36. *Id.* at 5.

37. *Id.*

in the DECA precludes mutual arrangements or agreements allowing such operations so long as there is prior approval by the government of Turkey. When the United States sought to use Incirlik Air Base in January 1991 to strike at Iraqi military targets, Turkish President Turgut Ozal sought (and received) the approval of his nation's Parliament before the United States could begin its operations.<sup>38</sup>

For its part, the United States agrees to "use its best efforts" to provide Turkey with "defense equipment, services and training in accordance with programs to be mutually agreed upon."<sup>39</sup> In Supplementary Agreement Number 1, the parties establish a Joint Turkish-U.S. Defense Support Commission composed of senior Turkish and U.S. representatives to facilitate long-range defense planning.<sup>40</sup> Various other supplementary agreements, implementing agreements, and annexes detail the missions, force levels, and operations procedures for use of the Turkish installations by U.S. forces.<sup>41</sup> Of particular note is Supplementary Agreement Number 3, which sets out the general guidelines governing the use of installations in Turkey.<sup>42</sup>

Article VII of DECA states that the basic agreement and its supplementary agreements shall remain in force for five years, after which it will continue in force from year to year until terminated by agreement of the parties or upon three months notice prior to the end of each subsequent year.<sup>43</sup> By an exchange of letters dated March 16, 1987, the United States and Turkey extended the initial term of the DECA for another period of five years, until December 18, 1990.<sup>44</sup> Thus, Turkey and the United States could now determine at any time that they wish to terminate the DECA, and absent a new agreement, the DECA would expire at the end of the calendar year, so long as the notice of termination had been given by the end of the previous August. Given the strong state of United States-Turkish relations, it is unlikely that either party would wish to terminate the agreement, but renegotiation of the agreement, or of one or more of its implementing agreements, is not unlikely in the 1990s.

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38. *U.S. Planes Strike From Base in Turkey*, Wash. Post, Jan. 19, 1991, at A23, col. 1.

39. U.S.-Turkey Agreement, *supra* note 30, at art. III; Supplementary Agreement No. 1 on Defense Support, United States-Turkey, Mar. 29, 1980, 32 U.S.T. 3323, T.I.A.S. No. 9901.

40. Supplementary Agreement No. 1 on Defense Support, *supra* note 39, at 7.

41. See, e.g., Supplementary Agreement No. 2 on Defense Industrial Cooperation, with Annex, U.S.-Turkey, Mar. 29, 1980, U.S.T. 3323, T.I.A.S. No. 9901, at 10; Supplementary Agreement No. 3 on Installations, with Implementing Agreements Annexed, United States-Turkey, Mar. 29, 1980, 32 U.S.T. 3323, T.I.A.S. No. 9901, at 16.

42. Supplementary Agreement No. 3, *supra* note 41.

43. United States-Turkey Agreement, *supra* note 30, at 5.

44. Exchange of Letters, United States-Turkey, March 16, 1987 (unpublished text on file at Cornell Int'l L.J. office).

## B. Spain

The United States bilateral defense relationship with Spain originated with a September 1953 agreement permitting U.S. use of air and naval bases in Spain.<sup>45</sup> In turn, the United States provided military assistance and training to Spanish forces. Various other defense agreements between the United States and Spain were developed through the 1970s even though Spain was not even a member of NATO.

Spain formally became a member of NATO on May 30, 1982,<sup>46</sup> and barely two months later, Spain and the United States signed a new executive agreement on the use of Spanish bases. This agreement, the Agreement on Friendship, Defense and Cooperation,<sup>47</sup> permitted the United States to use the Rota Naval Base and Torrejon, Zaragoza, and Moron Air Bases as well as certain storage and communications facilities. Forces deployed from these facilities were in an excellent geographic position to cover the western approaches to Gibraltar, the western Mediterranean, and even the eastern Atlantic. Torrejon Air Base served as the headquarters of the 16th U.S. Tactical Air Force of the U.S. Air Forces, Europe (commonly referred to as "USAFE").<sup>48</sup>

In the mid-1980s, the Government of Spain expressed a desire to renegotiate the 1983 Agreement. In November 1988, negotiations for a new agreement, the Agreement on Defense Cooperation, were concluded; the new agreement entered into force on May 4, 1989.<sup>49</sup> The new defense agreement is quite long, consisting of six chapters containing sixty-nine articles, plus eight annexes, two of which are devoted to status-of-forces matters.

Article 2 sets the stage for the Agreement on Defense Cooperation. In it, Spain grants to the United States the use of certain operational and support installations and the use of Spanish territory, territorial sea and airspace for "purposes within the bilateral or multilateral scope of this Agreement."<sup>50</sup> The authorized purposes for which the U.S. may use Spanish territory are then spelled out in subsequent articles. These include use of facilities in Spain for "military purposes,"<sup>51</sup> assignment of U.S. forces to the installations to carry out authorized activities,<sup>52</sup> storage of ammunition and explosives,<sup>53</sup> overflight and transit of air-

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45. Agreement on Mutual Defense Assistance, Sept. 26, 1953, United States-Spain, 4 U.S.T. 1876, T.I.A.S. No. 2849, 207 U.N.T.S. 87.

46. Protocol to the North Atlantic Treaty on the Accession of Spain, Dec. 10, 1981, T.I.A.S. No. 10564.

47. Agreement on Friendship, Defense and Cooperation, July 2, 1982, United States-Spain; T.I.A.S. No. 10589.

48. See REPORT, *supra* note 16, at 14-15.

49. Agreement on Defense Cooperation, Dec. 1, 1988, United States-Spain (unpublished text on file at Cornell Int'l L.J. office) [hereinafter United States-Spain Agreement].

50. *Id.* at art. 2, ¶ 2.

51. *Id.* at art. 8, ¶ 1.

52. *Id.* at art. 22.

53. *Id.* at art. 23.

craft,<sup>54</sup> aircraft training,<sup>55</sup> and fuel storage.<sup>56</sup> Article 2 also provides that any use beyond these purposes requires the prior authorization of the Government of Spain.<sup>57</sup> In addition, the parties "recognize" the importance of maintaining military education, training, and exchange programs for their armed forces and, when appropriate, cooperation on programs such as funding purchases of armaments, material, and equipment.<sup>58</sup>

Article 7 of the Agreement on Defense Cooperation establishes a permanent committee to ensure coordination between the parties in the implementation of the agreement and to resolve disputes in its application. The permanent committee is assigned various other tasks, such as monitoring the condition of the facilities,<sup>59</sup> considering requests by the United States to exceed authorized levels of forces,<sup>60</sup> and administering the transfer back to Spain of installations from which the U.S. has withdrawn.<sup>61</sup>

The Agreement on Defense Cooperation contains detailed provisions on what happens if the U.S. withdraws from Spanish installations. Typically, in agreements such as this, the United States is interested in maintaining the right to remove U.S. property at the installation, while the host government is interested in maintaining the usefulness of the installation by having the opportunity to purchase necessary equipment, especially if the United States considers the equipment to be in excess of its needs. Article 19 of the Spanish Agreement reflects these concerns.

The Spanish Agreement on Defense Cooperation recognizes that defense activities can and do have environmental implications. Article 20 states that "[t]o ensure adequate protection for the environment and public health, the military authorities of both countries shall collaborate with a view toward meeting the legal standards applicable to [these installations], in particular those relating to hazardous, pollutant, and toxic substances."<sup>62</sup>

Most U.S. bilateral defense agreements on facilities make some reference to the status of forces, but they leave detailed provisions to a separate SOFA. Further, these provisions usually cover only the status of U.S. forces abroad. The Spanish Agreement on Defense Cooperation, however, contains extensive provisions on both the status of U.S. forces in Spain<sup>63</sup> and the status of Spanish forces in the United States.<sup>64</sup>

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54. *Id.* at arts. 24-25.

55. *Id.* at art. 27.

56. *Id.* at art. 35.

57. *Id.*

58. *Id.* at art. 2, ¶ 3.

59. *Id.* at art. 8, ¶ 3.

60. *Id.* at art. 18, ¶ 5.

61. *Id.* at art. 19, ¶ 3.

62. *Id.* at art. 20, ¶ 4.

63. *Id.* at arts. 36-51.

64. *Id.* at arts. 52-67.

The specific facilities authorized for U.S. use, known in the Agreement on Defense Cooperation as "Operational and Support Installations" or "IDAs," and the authorized force level at each facility are specified in the annexes to the agreement. These installations are under Spanish command and the Spanish flag flies over them.<sup>65</sup> U.S. forces are commanded by a U.S. Commander and retain control over the equipment, material, and premises used exclusively by them.<sup>66</sup> Each party bears the costs of operation and maintenance of services and installations used exclusively by that party.<sup>67</sup> Where joint use occurs, the cost is shared by the parties on a proportional basis.<sup>68</sup>

One important aspect of the overall negotiation of the Agreement on Defense Cooperation was that, while the use of Zaragoza Air Base, Moron Air Base, Rota Air Base, and various communications facilities continued to be authorized, Spain decided to withdraw its authorization to use Torrejon Air Base and to reduce U.S. operations at Zaragoza Air Base. This action involved extensive discussions between the parties as to the timetable for U.S. withdrawal, the relinquishment of facilities and property at the base, and the impact on the overall United States-Spain defense relationship. The same issues concerning withdrawal of U.S. forces from certain facilities were to arise shortly thereafter with the negotiation of the new United States-Greece defense agreement.

### C. Greece

Greece joined NATO on February 15, 1952.<sup>69</sup> Shortly thereafter, on October 12, 1953, the United States and Greece concluded a bilateral facilities agreement.<sup>70</sup> This agreement authorizes the construction, development, use and operation of "military and supporting facilities" in Greece in "implementation of, or in furtherance of, approved NATO plans."<sup>71</sup>

On July 15, 1983, the United States and Greece concluded a Defense and Economic Cooperation Agreement,<sup>72</sup> which authorized the United States to maintain and operate several important facilities in Greece.<sup>73</sup> Under that agreement, Hellenikon Air Base, near Athens, served as an important staging point for air transport operations of USAFE and as a support installation for the U.S. Military Airlift Command ("MAC"). Nea Makri Communications Station on the Greek

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65. *Id.* at art. 16, ¶ 2.

66. *Id.*

67. *Id.* at art. 20, ¶ 3.

68. *Id.*

69. See Protocol, *supra* note 27.

70. Agreement Concerning Military Facilities, Oct. 12, 1953, United States-Greece, 4 U.S.T. 2189, T.I.A.S. No. 2868, 234 U.N.T.S. 43.

71. *Id.*, 4 U.S.T. 2189, 2192-94; T.I.A.S. No. 2868, at 4-6; 34 U.N.T.S. 43, 46-48.

72. Agreement on Defense and Economic Cooperation, Sept. 8, 1983, United States-Greece, T.I.A.S. No. 10814 (entered into force Dec. 20, 1983) [hereinafter U.S.-Greece Agreement].

73. *Id.*



mainland near Marathon Bay served as a key communications link for the Sixth Fleet. On the island of Crete, Souda Bay provided an excellent port for U.S. naval vessels operating in the eastern Mediterranean and in need of petroleum, oil, lubricants, and ammunition. The complex also included an outstanding airfield that permitted support for U.S. maritime patrol aircraft. In addition, U.S. communications facilities (such as facilities at Iraklion, Crete) and various U.S. and NATO support sites were scattered around Greece.<sup>74</sup> The 1983 bilateral defense agreement provided that the accord was terminable after five years upon written notice by either party. Notice was to be given five months prior to the date that the termination was to take effect. The United States was to be given seventeen months to complete the withdrawal of its forces, property, and equipment from Greece.<sup>75</sup>

In 1987, the Government of Greece notified the United States that the 1983 agreement would terminate and proposed negotiation of a new agreement. These negotiations commenced and continued long enough that the seventeen-month withdrawal period had to be extended to twenty-three months. During the negotiations, the United States decided to close down certain facilities: Hellenikon Air Base, the various communications sites, and the Nea Makri Naval Communications complex. The dates of withdrawal were staggered: from Nea Makri by September 20, 1989, from Hellenikon by June 30, 1991, and from the various communications sites after commercially leased circuits necessary to U.S. operations were in place. Consequently, the new agreement was drafted to provide for the orderly withdrawal of U.S. forces from these facilities.

This new accord, the Mutual Defense Cooperation Agreement, entered into force on November 6, 1990.<sup>76</sup> The preamble states that the relations of the two parties are "based on a common devotion to the principles of freedom, democracy, human rights, justice and social progress," and that the parties are "dedicated to the maintenance of peace, including the settlement of disputes through peaceful means."<sup>77</sup> In article I, Greece authorizes the United States to maintain and operate military and supporting facilities in Greece as specified in the agreement's Annex in Implementation.<sup>78</sup> There are no restrictions on this authorization, although Article VIII of the agreement preserves the right of the Government of Greece "to take immediately all appropriate restrictive measures required to safeguard its vital national security interests in an

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74. See REPORT, *supra* note 16, at 35-36.

75. U.S.-Greece Agreement, *supra* note 72, T.I.A.S. No. 10814, at art. XII, ¶ 2.

76. Mutual Defense Cooperation Agreement, July 8, 1990, United States-Greece (unpublished text on file at Cornell Int'l L.J. office). The agreement was accompanied by a side letter, dated July 8, 1990, in which the United States undertook "annually to seek appropriate levels of defense support to assist in Greek Armed Forces modernization" (unpublished text on file at Cornell Int'l L.J. office).

77. *Id.* at Preamble.

78. *Id.* at art. I, ¶ 1.

emergency.”<sup>79</sup>

To see which facilities are provided under the Mutual Defense Cooperation Agreement, one must refer to the Annex. The Annex provides for the continued use of Iraklion Communications Station for “communications and scientific research and analysis and communication of data.”<sup>80</sup> The Annex also authorizes continued use of Souda Air Base for “operation, maintenance and support of United States maritime patrol and reconnaissance aircraft and limited conduct of technical ground processing.”<sup>81</sup>

Article II recognizes that the status of U.S. forces in Greece shall be governed by the NATO SOFA, but it calls upon the parties to determine at a later date whether the existing bilateral agreements supplementary to the NATO SOFA need to be consolidated and modernized, in which case the parties shall proceed to do so.<sup>82</sup> Article V provides for a Joint Commission to deal with questions or differences that might arise concerning the interpretation or implementation of the agreement.<sup>83</sup> The Joint Commission is also charged with reviewing all existing implementing arrangements between the parties at the request of either party.<sup>84</sup> In addition, under Article VI, the parties agree to establish a “High-Level Consultative Committee” to meet annually to conduct a “comprehensive review of their defense relationship.”<sup>85</sup>

Like the 1983 Defense and Economic Cooperation Agreement, the 1990 Mutual Defense Cooperation Agreement calls upon the United States to assist in the “modernization and enhancement of the capabilities of the Greek Armed Forces.”<sup>86</sup> Moreover, the parties recognize “the relationships between defense capability and economic growth and stability” and agree to cooperate in the areas of economic, industrial, scientific, and technological relations.<sup>87</sup>

The duration of the Defense and Economic Cooperation Agreement is eight years and may be extended in subsequent years if the parties so agree.<sup>88</sup> Again, the United States is provided a period of seventeen months after expiration of the agreement to withdraw its forces, with the terms of the agreement continuing to apply during that period.<sup>89</sup>

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79. *Id.* at art. VIII, ¶ 1.

80. *Id.* at Annex, 1, B.5.

81. *Id.*

82. *Id.* at art. II, ¶ 4.

83. *Id.* at art. V, ¶ 1.

84. *Id.* at art. XI, ¶ 2.

85. *Id.* at art. VI.

86. *Id.* at art. IX, ¶ 1.

87. *Id.* at art. X, ¶ 2.

88. *Id.* at art. XII, ¶ 1.

89. *Id.* at art. XII, ¶ 2.

#### IV. The Future of Bilateral Defense Agreements in Europe

What can be said about the future of U.S. bilateral defense agreements with European allies and the role of these agreements in maintaining the European security equilibrium? U.S. forces will continue to be deployed in Europe, albeit in smaller numbers, and bilateral agreements are needed to secure rights and define obligations that arise from those deployments. For that reason, bilateral agreements will retain their vitality and will continue to serve the functions they have served for the past forty years. These agreements will continue to have as their stated purpose the overall defense cooperation and mutual security of the parties. The agreements will continue to authorize the use of host country installations at some level, whether for permanent stationing of forces or for the prepositioning of equipment. Some form of joint committee or periodic consultation will exist regarding the defense relationship. There are, however, some issues that may be particularly prominent in the years to come as these agreements evolve and are renegotiated, amended, or supplemented.

First is the issue of the levels of U.S. forces that will continue to be deployed in Europe. Both as a consequence of the Conventional Forces in Europe Treaty and in light of the diminished Soviet threat to NATO in Europe, U.S. forces in Europe will be substantially reduced by 1995. Budgetary constraints also will continue to exert downward pressure on force levels. At the same time, the U.S. plans to retain a significant presence in Europe for the foreseeable future.<sup>90</sup>

As the number of U.S. forces at certain facilities are decreased and these facilities are returned to host governments, numerous questions will arise concerning the continued functioning of the facilities under host government control. In what crisis circumstances can the United States renew its access to facilities from which it has withdrawn? What kind of transition period will exist? What property will be left behind by the United States? Will payment be made by the host government to the United States for the "residual value" of property and improvements funded by the United States? The provisions of existing defense agreements address some of these matters already, but these issues will probably arise much more frequently in the near future than they have in the past.<sup>91</sup>

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90. See *FY 1992-93 Budget for the Department of Defense: Hearings Before the Senate Comm. on Armed Services*, 101st Cong., 2d Sess. (1991) (Statement of Dick Cheney, Secretary of Defense).

91. For example, although the United States has succeeded in obtaining host country agreement to pay compensation to the United States for the residual value of facilities returned to the host government, this host country obligation has rarely been tested. How does one assess this residual value? The Congress has made it quite clear that it believes residual value should be paid for by the host government upon termination of U.S. operations at military installations abroad. See National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 2921, 104 Stat. 1485 (1990). In negotiating bilateral defense agreements in the future, U.S.

A second important issue with which U.S. bilateral defense agreements will be concerned is the geographical focus of the nation's security relations. The mission of NATO has historically been to contain the Soviet Union (and Warsaw Pact) threat, and bilateral defense agreements were negotiated and concluded in that context. But it is in the United States' interest that bilateral defense agreements contain sufficient flexibility to address "out of NATO area" concerns. The recent war against Iraq is an excellent example of the need for such flexibility. During the crisis, the United States and its allies drew extensively on supplies and personnel located in Europe to sustain U.S. forces in the Middle East, and our European allies granted permission for extensive overflights and temporary basing rights to the United States. We must continue to be in a position to project military power by moving personnel and equipment from European facilities (as well as from the United States) to the scene of the crisis quickly and in sufficient numbers to determine the outcome. Assembling a fighting force at distant locations requires ready, mobile forces and an appropriate mix of airlift, sealift, and forward-positioned equipment stocks. Bilateral defense agreements that are narrowly drafted to reflect security threats to NATO from the former Eastern bloc could impede U.S. ability to respond quickly and effectively to other security threats.

A third issue is the evolving nature of the U.S. security assistance relationship with its European allies. Once again, U.S. budget constraints and the diminishing Soviet threat are altering the ability and the need for the United States to provide large amounts of funding for arms and technology sales to some of the countries with which it has defense relationships. Although existing defense agreements do not directly correlate authorization to deploy forces with continued U.S. security assistance funding, the two as a matter of practice have often gone hand in hand. As levels of U.S. funding decrease and allies assume more and more of their burdensharing responsibilities, U.S. bilateral defense agreements should continue to separate the presence of U.S. forces in Europe from the need for U.S. security assistance funding. At least in the short term, declining U.S. funding can be off-set with the distribution or "cascading" to allies of equipment that the United States must dispose of under its Conventional Forces in Europe Treaty obligations.<sup>92</sup> Likewise, the United States may be able to dispose of excess defense articles to its allies at little or no cost in the event that it withdraws from certain facilities. While U.S. security assistance policy recognizes that improvement of the military capabilities of recipient nations enhances overall NATO security, in the long term the recipient nations should be able to provide more fully for their own defense, particularly at a time of declining threat. Economic aid to NATO allies will also decline in coming years and should similarly be decoupled from U.S.

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officials must assess carefully issues such as these in light of potential U.S. troop withdrawals.

92. Treaty on Conventional Forces in Europe, *supra* note 3.

defense relations. This approach does not preclude recognizing that economic cooperation may be an aspect of defense cooperation, but rather it postulates that whatever the level of cooperation, it be accomplished on principles of reciprocity or mutual benefit.

A fourth issue that future bilateral defense agreements will need to address is the overall scope of "security" threats. The primary emphasis of our bilateral defense agreements in the Cold-War era has been on military attack, conventional or nuclear, against Europe. Thus, these agreements have focused on deployment of forces, training, and use of facilities in the context of military conflict. There are, however, other types of threats to U.S. security interests that we are only beginning to appreciate. For instance, the use of American and British forces to set up refugee bases in Northern Iraq suggests that NATO forces must be capable of responding to a variety of crises besides actual armed conflict.

Another example of the need to refocus bilateral agreements is the high-priority national security mission of U.S. armed forces to detect and counter the production and trafficking of illegal drugs. Domestically, the Department of Defense has addressed this problem by establishing an effective communications network for federal, state, and local law enforcement agencies, and by enhancing operational detection and monitoring capabilities.<sup>93</sup> Internationally, and particularly in Latin America, the Department of Defense is working with host governments to interdict drugs before they reach U.S. borders. Moreover, Congress recently proposed the establishment of a multilateral, counter-drug strike force.<sup>94</sup> Depending upon how the supply of drugs to the United States evolves, and upon how destructive the drug problem becomes for Europe, narcotics trafficking may be a threat that the U.S. wishes to address further in its relations with European allies.

Likewise, the spread of international terrorism poses a threat to the United States and Europe. Deterring such attacks on citizens and property and responding effectively to them when they occur is an existing mission of U.S. forces and could serve as an area of greater defense cooperation with European armed forces.

Although the environment has not traditionally been considered an aspect of a country's national security, the extensive environmental destruction throughout Europe, particularly Eastern Europe, may prompt calls for devoting greater resources, including military resources, to combating environmental degradation. The idea of using military resources in such a manner is already at work in the United States with recent legislation requiring the Secretary of Defense to establish a "Strategic Environmental Research and Development Pro-

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93. See Hearings Before the Senate Comm. on Armed Services, 101st Cong., 2d Sess. 7-8 (1991) (Statement of Colin Powell, Chairman of the Joint Chiefs of Staff) (unpublished text on file at *Cornell Int'l L.J.* office).

94. National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, §§ 1001-1011, 104 Stat. 1485 (1990).

gram.”<sup>95</sup> The purposes of this program include assisting in the collection of environmental data and identifying research, technology, and other information developed by the Departments of Defense and Energy that would be useful to governmental and private organizations involved in the development of energy and pollution control technology. Were such a program to be expanded to involve cooperation by U.S. forces abroad with host country forces and environmental groups, the bilateral defense agreement would be a logical place to set down the basic rules and principles to govern such cooperation.

## V. Conclusion

The United States bilateral defense agreements with its European allies have been an important component of its security relationship with Europe since the Second World War. These agreements initially were short agreements concerned primarily with cooperation within the context of NATO's mission to contain the Soviet Union in the event of armed conflict. As time went by, these agreements evolved to cover the variety of issues that arise under normal, peacetime cooperation in defense relations, and even included economic cooperation in some cases.

As Europe evolves and the security threats to Europe and the United States are redefined, attention should not be given just to multilateral arrangements for maintaining a security equilibrium, but to bilateral defense agreements as well. These bilateral agreements are time-tested instruments for involvement of the United States in European defense relations and, unlike multilateral arrangements, have a great capacity for flexibility and adaptability to the particular bilateral relationship of the two countries concerned. Whether the Soviet threat is truly diminished, whether other countries threaten European security, whether ethnic or nationalist sentiments threaten regional stability, and whether other European security threats emerge, the instrument of the bilateral defense agreement allows the United States to continue playing a key role in European security.

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95. *Id.* at §§ 1801-02.

